

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

WILLIAM BYER, JR.
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JUSTIN F. ROEBEL
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JEFFREY E. PERKINS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 48A02-0512-CR-1152
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MADISON COUNTY COURT, DIVISION ONE
The Honorable David W. Hopper, Judge
Cause No. 48E01-0302-FD-64

November 27, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jeffrey E. Perkins (“Perkins”) appeals from a jury conviction in Madison Superior Court of Class A misdemeanor operating a vehicle while intoxicated (“OWI”) and Class D felony OWI. He raises two issues, which we reorder and restate as:

- I. Whether the trial court abused its discretion when it admitted evidence of Perkins’s prescription drug use; and,
- II. Whether sufficient evidence supports Perkins’s conviction.

Concluding that the trial court did not abuse its discretion in the admission of evidence and that sufficient evidence supports his conviction, we affirm.

Facts and Procedural History

On the evening of December 26, 2002, Anderson Police Officer Richard Richwine (“Officer Richwine”) was dispatched to investigate a possible traffic accident on Columbus Avenue in Anderson. He arrived at the scene to find Perkins’s car pulled over to the side of the roadway, partially blocking the entrance to an apartment complex. When Officer Richwine arrived, paramedics were removing the apparently unconscious Perkins from the driver’s seat. Perkins was then transported to the hospital by ambulance. At the hospital, Perkins’s speech was “very broken” and “reflecting incoherency.” Tr. p. 44. Officer Richwine observed Perkins “somewhat shaking or vibrating while on the cot,” and “unsteady on his feet, unsteady in balance, and needing support” when he stood. *Id.* at 44, 47. After being advised of Indiana’s Implied Consent Law, Perkins agreed to submit to a chemical test, and a nurse drew a blood sample. Testing of Perkins’s blood sample revealed the presence of alprazolam and hydrocodone.

On February 13, 2003, the State charged Perkins with OWI as a Class A misdemeanor with an enhancement to a Class D felony for OWI with a prior conviction.

Prior to trial, the State filed a motion in limine to exclude “any evidence regarding any prescription history or pharmacy records of Defendant, absent a showing outside the presence of the Jury that such records are both not hearsay and are otherwise relevant to the charged incident.” Appellant’s App. p. 9. The trial court granted the motion in part, finding that Perkins’s prescription history and pharmacy records were relevant, but that their admissibility “probably depends on the way the evidence comes in in the case.” Tr. pp. 14-15.

A jury trial commenced on February 23, 2005. Perkins testified at trial that on the evening of December 26, 2002, he was driving to visit his father when he experienced shortness of breath and pain. Id. at 155. He pulled his car off the road, but could not see the curb because of snow. Id. at 136. Perkins further testified that after pulling over, he turned off his car and took his prescription blood pressure medication, after which he remembered nothing. Id. at 158.

A jury convicted Perkins of Class A misdemeanor OWI. Following the jury’s verdict, Perkins pled guilty to Class D felony OWI with a previous conviction. The trial court conducted a sentencing hearing and sentenced Perkins to thirty-six months, suspended thirty months, and ordered that he serve six months on home detention. After receiving permission from the trial court to file a belated notice of appeal, Perkins now appeals.

I. Admission of Evidence

First, Perkins argues that the trial court improperly admitted testimony about his prescription drug history. Because the admission and exclusion of evidence falls within

the sound discretion of the trial court, we review the admission of evidence only for abuse of discretion. Wilson v. State, 765 N.E.2d 1265, 1272 (Ind. 2002). An abuse of discretion occurs “where the decision is clearly against the logic and effect of the facts and circumstances.” Smith v. State, 754 N.E.2d 502, 504 (Ind. 2001).

Perkins argues that the trial court improperly permitted the State to question him about his prescription drug history in violation of the State’s own motion in limine. During direct examination, Perkins volunteered that he “was on twelve different kinds” of blood pressure medication at the time of his arrest. Tr. p. 157. On cross-examination, the State questioned Perkins about these prescription medications. Id. at 167-68. Perkins objected, arguing that because the trial court had granted the State’s motion in limine, he had been limited in his cross-examination of the State’s toxicologist.

The trial court overruled Perkins’s objection, noting that it had ruled that Perkins “couldn’t show them the [prescription] bottles...[but] whether you asked about those [drug] names or not, that’s up to you.” Id. at 174. Moreover, a party opens the door to otherwise inadmissible evidence when it introduces evidence that would be misleading without greater explanation. Jackson v. State, 728 N.E.2d 147, 152 (Ind. 2000). In his direct testimony, Perkins stated that he was on twelve different types of blood pressure medications. Tr. p. 157. On cross-examination, the State then asked Perkins to clarify his testimony about his prescriptions. Tr. pp. 167-69. Thus, the trial court did not abuse its discretion when it permitted the State to question Perkins on his prescription drug use.

II. Sufficiency

Next, Perkins contends that the State failed to present sufficient evidence to support his OWI conviction. Our standard of review for sufficiency claims is well settled. We neither reweigh the evidence nor judge the credibility of the witnesses. Cox v. State, 774 N.E.2d 1025, 1029 (Ind. Ct. App. 2002). We only consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. Id. Where there is substantial evidence of probative value to support the judgment, it will not be disturbed. Armour v. State, 762 N.E.2d 208, 215 (Ind. Ct. App. 2002), trans. denied.

To establish Class A misdemeanor OWI, the State was required to prove beyond a reasonable doubt that (1) Perkins; (2) operated; (3) a vehicle; (4) while intoxicated; (5) in a manner that endangered a person. Ind. Code § 9-30-5-2(b) (2004). Perkins admits to operating the vehicle, but contends that the evidence presented does not establish that he operated the vehicle while in an impaired or intoxicated state. Specifically, he argues that the State cannot show “when [Perkins] took the medication which may have rendered him impaired.” Br. of Appellant at 11.

However, convictions of operating while intoxicated may be supported by circumstantial evidence. Ashba v. State, 816 N.E.2d 862, 867 (Ind. Ct. App. 2004). Here, Perkins testified that he was driving to visit his father between 7:30 and 8:00 p.m. Tr. p. 154. Officer Richwine testified that he was dispatched to the location of Perkins’s car at 7:55 p.m. to investigate a possible accident. Tr. p. 39. The blood draw performed at the hospital revealed the presence of alprazolam and hydrocodone in Perkins’s blood.

Ex. Vol., State's Ex. 2. Finally, the State's toxicologist testified that these drugs have a "synergistic effect" when taken together and that "they interact with each other, compound[ing] their effects on the brain." Tr. pp. 98-99. In addition, the toxicologist testified that alprazolam reaches peak blood level within an hour to an hour and a half, while hydrocodone reaches peak blood level within thirty to forty-five minutes of being ingested. Tr. p. 113. From this evidence and the testimony regarding Perkins's speech and balance problems at the hospital, the jury could reasonably infer that Perkins was intoxicated while he operated his vehicle.

Conclusion

The trial court did not abuse its discretion in the admission of evidence and sufficient evidence supports Perkins's conviction.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.